

**IN THE  
Supreme Court of the United States**

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**October Term, 1976**

**No. ....**

**76-1730**

**WILLIAM B. RICHARDSON,**  
*Petitioner*

**v.**

**J. T. SPAHR, Director, Executive Staff,  
Bureau of Government Financial Operations,  
Department of the Treasury  
Etc., et al.**

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**PETITION FOR A WRIT OF CERTIORARI**

**TO THE CIRCUIT COURT OF APPEALS**

**For the Third Circuit**

**No. 76 - 1401**

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**WILLIAM B. RICHARDSON, pro se**  
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## I

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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1976

No.

WILLIAM B. RICHARDSON  
v. Petitioner

J. T. SPAHR, Director, Executive Staff, Bureau of  
Government Financial Ops., Dept of the Treasury,  
ROBERT S. YOUNG, Freedom of Information Coordinator  
Central Intelligence Agency, WILLIAM E. COLBY, Dir.,  
Central Intelligence Agency; JAMES T. LYNN, Dir.,  
Office of Management and Budget; WILLIAM E. SIMON,  
Sec'y of the Treasury; EDWARD H. LEVI, Attorney  
General of the United States,  
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, William B. Richardson, prays that  
a writ of certiorari issue to review the judgment  
of the United States Circuit Court of Appeals for  
the Third Circuit in this case.

OPINION BELOW

The order of the Court of Appeals affirming  
without published opinion the opinion and order of  
the District Court is reported at 547 F2d 1163.  
The opinion and order of the district court (App B,  
infra, pp. 2a-6a) is reported at 416 F. Supp. 752.

JURISDICTION

The judgment of the court of appeals was  
entered on December 23rd, 1976, confirming with-  
out comment the district court Opinion and Order  
(App., infra, pp 2a - 6a). Final judgment by  
the court in banc, Third Circuit, was entered  
February 17th, 1977 (App. A, infra, p 1a). On  
May 18th, 1977, Mr. Justice BRENNAN extended the  
time for filing a petition for a writ of certie-  
rari to and including June 7th, 1977. The  
jurisdiction of this Court is invoked under  
Title 28 U.S.C. sect. 1254(1).

QUESTION PRESENTED

In a Freedom of Information Act case where  
the court grants summary judgment to the Govern-  
ment on grounds the records requested are properly  
classified "Secret" and that they are exempt by  
statute, can the court disregard plaintiff's  
cited authority and an anomalous method of ac-  
counting and reporting (D.A.PAGLIAI affidavit:  
App. D, infra, pp 16a-20a), instituted by and  
for the C.I.A., inconsistent with the authority  
cited by the Government and defying the authority  
on which plaintiff was proceeding thus denying  
the petitioner-plaintiff records which, by  
constitutional and statutory mandate, should be  
in the public domain?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent text of the following provisions are set out in Appendix C, infra, pp 7a - 16a:

United States Constitution  
p 7a Article I Section 9 Clause 7

Freedom of Information Act  
p 7a Tit. 5 USC s. 552(a)(3)  
p 7a Tit. 5 USC s. 552(b)(1)  
p 8a Tit. 5 USC s. 552(b)(3)  
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p 9a Tit. 18 USC s. 643  
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p 11a Tit. 31 USC s. 65  
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National Security  
p 13a Tit. 50 USC s. 403(d)(3)

Central Intelligence Agency Act  
p 14a Tit. 50 USC s. 403f(a)  
p 15a Tit. 50 USC s. 403g  
p 15a Tit. 50 USC s. 403j(b)

Executive Order  
p 15a E. O. 11652 - pertinent part

## STATEMENT

On February 19th, 1975, a new amendment to the Freedom of Information Act (Title 5 USC 552(a)(3) infra, p. 7a) became effective. On the same day, before any published rules had appeared in the Federal Register, the petitioner wrote the Treasury Department, the Office of Management and Budget, and the Central Intelligence Agency for all these records they would be required to report under the constitutional provision Article I Section 9 Clause 7 and supporting statutes. Additional records were requested from the C.I.A. not germane to this petition. All records in this category were requested since the inception of the Central Intelligence Agency. These requests were denied. Petitioner, as plaintiff pro se, filed a separate complaint in the Federal District Court for the Western District of Pennsylvania at Pittsburgh against the Treasury and the C.I.A. After appearance of the D. A. PAGLIAI affidavit (App. D, infra, pp 16a - 20a), petitioner filed a third complaint including as defendants top officials of each Department to which the original three letters had been sent and the Attorney General as defendant because it was obvious that the Attorney General's office had been knowingly upholding, since 1967 when petitioner first filed suit, a fiscal accounting and reporting system violative of criminal laws. This was now evidentially sustainable in the D. A. PAGLIAI affidavit. The three complaints were consolidated by the district court. This petition for Writ of Certiorari is from the consolidated case.

Beginning with his letters, in his complaints, and in oral and written arguments before the district court, petitioner made it clear that he relied on Article I Section 9 Clause 7 of the Constitution and implementing statutes of the criminal and fiscal codes (Title 18 and 31 statutes, App. C, infra, pp 7a - 16a) which specifically put certain accounting and reporting responsibilities

of the Treasury in the public domain. The petitioner contended that the Treasury's responsibility cannot be escaped by a system of falsification of documents to accommodate the C.I.A. simply because Government officials stretch generalized and ambiguous statements in Executive Order 11652 and the National Security Statutes (including the C.I.A. Act); especially when the C.I.A. Act attempted to provide a non-falsifying and secure method of reporting (50 U.S.C. 403j(b), App. C, p. 15a) by non-classified certificate of the Director. The petitioner further argued that by such manipulation, the exemptions of the Freedom of Information Act operate to sustain a criminal method of accounting and reporting - a usurped delegation of authority which has never been committed to either the Congress or the Executive by implication or otherwise by the Constitution (for cogent example see Title 18 USC sect. 1001; App. C, infra, p. 10a; compare para 7, D.A.PAGLIAI affidavit; App. D, infra, p. 18a).

Neither jurisdiction nor justiciability is in issue here. The district court entered a Summary Judgment (App. B, infra, 2a - 6a) based on affidavits submitted by the defendants that the documents were exempt under Title 5 U.S.C. sect. 552(b)(1) 552(b)(3) (App. C, infra, pp 7a - 8a). On December 23rd, 1976 and a gain on February 17th, 1977, the the Third Circuit affirmed the district court without opinion.

The Government, and ultimately the district court, relied on Executive Order 11652 (which describes in general terms the "secret" classification. App. C, infra, pp 15a - 16a) in conjunction with Title 5 USC 552(b)(1) (App. C, infra, p. 7a) and further relied on provisions of the National Security Statutes (Title 50 USC sections 403(d)(3),

403f(a), 403g, and 403j(b); App. C, infra, pp. 13a - 15a) in conjunction with Title 5 USC sect. 552(b)(3) which exempts records "specifically exempted from disclosure by statute."

The statutes relied on by the Government and the court do not "specifically" deny disclosure of the requested records; while the constitutional and statutory provisions relied on by the petitioner "specifically" mandate disclosure.

At no time were the provisions relied on by the Government cited as having a constitutional basis. The petitioner consistently made the connection between his statutory provisions (Title 31 and 18 laws; App. C, infra, pp. 9a - 13a) and the constitutional provision Art I Sect 9 Clause 7 (App. C, infra, p. 7a).

At no time did the Government, the district court, or the Third Circuit Court of Appeals attempt to reconcile, or even mention, the constitutional and statutory provisions vigorously argued by petitioner. Petitioner's arguments and authority were simply disregarded. No consideration was given to a review of the requested records in camera (Title 5 USC sect 552(a)(4)(B); App. C, infra, p. 8a). No consideration was given to segregable portions of a record as being disclosable (Title 5 USC sect 552(b); App C, infra, p. 8a).

Jurisdiction is based on Title 5 USC sect. 552(a)(4)(B) (App. C, infra, p. 8a), Title 28 USC sect. 1331 (Federal Question), Title 28 U.S.C.A. sect. 1343(4) (Damages or other relief based on violations Act of Congress for Civil Rights), Title 28 USC sect. 1346(a)(1) (Recover Internal Revenue Payments), and Title 28 USC sect. 1361 (Mandamus to Compel Officer to Perform His Duty).

## REASONS FOR GRANTING THE WRIT

Department of Air Force v Rose, \_\_\_US\_\_\_,  
48 L Ed 2d 11,21.

The basic thrust of the Freedom of Information Act is disclosure - it is not a withholding statute; it carries a basic philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language; it attempts to pierce and open the veil of administrative secrecy - to open agency action to the light of public scrutiny; nothing is to be withheld from the public or read to authorize withholding of information or limit availability of records to the public, except as specifically stated. Without question, the Act is broadly conceived. The FOIA Act seeks to permit access to official information long shielded unnecessarily from public view and attempt to create a judicially enforceable public right to secure such information from possibly unwilling official hands.

## REASONS FOR GRANTING THE WRIT - cont'd

The present case presents an important question on whether the petitioner-plaintiff can compel the courts to consider the constitutional and statutory provisions forming the basis of his complaint when the words thereof in their true ordinary meaning would entitle the petitioner to the relief he is seeking, or, can the courts expunge his basic provisions and the arguments thereon and twist the thrust of his attack for the purpose of rendering an unfavorable decision that has no basis in law or fact? Equally important here, perhaps, is the efficacy of the Supreme Court in eliminating manipulative Federal Government that says: "I'll do what I want to do until you make me do the right thing. This means you will have to go to court to effect a change. While you are trying to make me do the right thing, I will wear you down using taxpayer's money and starve you down until you will wish you had never seen the inside of a court room." The petitioner as a pro se litigant has been in court almost constantly for 10 years on this same subject.

## REASONS FOR GRANTING THE WRIT - cont'd

FOIA 5 USC 552(b)(1) - App. C, infra, p. 7a

Executive Order 11652 - App. C, infra, p. 15a

Exemption from disclosure under the above requires the matter be "specifically" authorized under criteria establishing it to be secret and it must be properly classified. Skipping the question of whether the requested records were matters "specifically" authorized or "properly classified", the petitioner goes to the question: on what basis and by what legislative enactment has power been delegated to the President to withhold from the public those records which by constitutional mandate (Art I Sect 9 Cl 7, App. C, infra, p 7a) and implementing statutes (Title 18 and 31 statutes, App. C, infra, pp 9a - 13a) have, by statute, been in the public domain for years?

The answer is: No such power has ever been delegated to the President!

"In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make the laws which the President is to execute." Youngstown Sheet & Metal Co. v Sawyer 343 US 579, 587 (1952)

## REASONS FOR GRANTING THE WRIT - cont'd

FOIA 5 USC 552(5)(3) - App. C, infra, p. 8a

National Security Statutes 50 USC 403 et seq App. C, infra, pp 13a - 14a, pertinent parts

Exemption from disclosure of records under the above requires the matter to be "specifically" exempted from disclosure by statute. The only statutes which "specifically" refer to the fiscal accounting and reporting responsibilities of the Executive agencies and the Treasury are the Criminal statutes (Title 18, infra, pp 9a - 11a) and the Money and Finance statutes (Title 31, infra. pp 11a - 13a) relied on by the petitioner. There is one exception that the Director, CIA is permitted to report and account on certificates (50 USC 403j(b), infra, p 15a). These certificates are now classified "secret" and a completely fraudulent system of accounting and reporting has been instituted wherein the official responsible for reporting overall governmental income and outlay has "millions" of records of transactions which show on their face that they were spent by an appropriated authority but may have been spent by an unappropriated authority (CIA).

## REASONS FOR GRANTING THE WRIT - cont'd

For purposes of Summary Judgement, the wording of constitutional and statutory provisions referred to in petitioner's complaint as a basis for his recovery cannot be refuted or ignored - they can only be interpreted. The court has no alternative but to dispose of such provisions judicially. The district court treated plaintiff-petitioner's provisions as though they had been repealed. "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable. - - - The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Morton v Mancari, 417 US 535, 551 (1974). "One canon of construction is that repeals by implication are disfavored. - - -

## REASONS FOR GRANTING THE WRIT - cont'd

The other relevant canon of construction that comes into play is that when a statute is ambiguous, construction should go in the direction of constitutional policy." Regional Rail Reorganization Act cases., 419 US 102, 133-134 (1974).

All of the statutes relied on by the petitioner have constitutional roots in Article I Section 9 Clause 7 (App. C, infra, p 7a). Petitioner made this clear in the district court and the Court of Appeals. There is no constitutional provision for promulgating statutes or Executive Orders that dishonestly manipulate the accounting and reporting of public money. In fact, there are no such statutes or Executive Orders except as they are interpreted. There is embezzlement and official fraud - on an extremely large scale.<sup>1</sup> This is why on the face of fundamental provisions he is entitled to the records, and yet, he is unable to obtain them.

If there is any wording in the National Security Statutes (CIA) that would be relevant in modifying in any way the applicable Money and Finance statutes

1. Title 18 USC 643 (App C, infra, p 9a and Title 18 USC 1001 (AppC, infra, p 10a)

## REASONS FOR GRANTING THE WRIT - cont'd

governing the accounting and reporting of public money, it would have to be in a very general way.

"A specific statute will not be controlled or nullified by a general one, regardless of priority of enactment." Morton v Mancari, 417 US 535, 550-551 (1974).

The petitioner should not have to submit evidence of witnesses, in affidavit form or otherwise, in order to prove his entitlement to records the statutes say he shall have.

"- - - where the court is justified by general considerations in declaring the truth of the proposition without requiring evidence from the party - - - the process most commonly meant by the term Judicial Notice." Wigmore, Evidence. Sect. 2565, 3rd Ed.

The provisions on which petitioner is proceeding on complaint; which he argued orally and put in his written briefs, were compelling proof overwhelmingly in support of a genuine issue on which the petitioner should prevail.

"Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented." Adickes v Kress & Co. 398 US 144, 160 (1970).

## REASONS FOR GRANTING THE WRIT - cont'd

Surely, the Government was not here entitled to a judgment as a matter of law. " - - - Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." Sarter v Arkansas Nat. Gas Co., 321 US 620, 627 (1944).

## CONCLUSION

The Third Circuit Court of Appeals has sanctioned a serious departure from the accepted and usual course of proceedings effecting and condoning a serious breach of applicable Supreme Court decisions calling for remedial consideration.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 76-1401

WILLIAM B. RICHARDSON

v.

J. T. SPAHR, etc., et al.,

William B. Richardson,  
Appellant

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, FORMAN, VAN DUSEN,  
ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER,  
WEIS, and GARTH, Circuit Judges

The petition for rehearing filed by

William B. Richardson, Appellant,

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for re-hearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

s/ MAX. ROSENN . . . . .  
Judge

Dated: February 17, 1977

(1a)

2a

APPENDIX B

THE OPINION AND ORDER OF SENIOR  
DISTRICT JUDGE WALLACE S. GOURLEY  
JANUARY 30th, 1976

This is a civil proceeding based on the Freedom of Information Act, 5 U.S.C.A., sect. 552, in which Civil Action No. 75-297, Civil Action No. 75-298, and Civil Action No. 75-712 have been consolidated by Order of Court on August 12, 1975. In each of these actions, the plaintiff, William B. Richardson, seeks to obtain from the defendants financial records which reflect C.I.A. transactions from the inception of the agency in 1947 until the present time. The immediate matters before the Court are defendants' Motion to Dismiss or in the Alternative for Summary Judgment. The Court has conducted a full and complete hearing and must conclude that defendants' Motion for Summary Judgment should be granted.

In view of the fact that all three civil actions are interrelated with common questions of law and fact and since the defendants raise the same legal arguments, for purposes of this proceeding, the Court will only make reference to the particular issues involved.

The Freedom of Information Act exempts from disclosure those documents "specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy." 5 U.S.C.A., sect 552(b)(3)(1970).

Pursuant to the Central Intelligence Act of 1949, as amended, the Central Intelligence Agency is authorized to receive funds from other agencies, to accept these funds without regard to other provisions of law, and for objects of a confidential nature, and to account for the same solely on the certification of the agency Director. The Act also provides as follows:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5." 50 U.S.C.A., sect. 403g.

A close and careful reading of the statute and its legislative history clearly and unequivocally reflects the approval by Congress for the secrecy involved in funding and operating intelligence operations. As a necessary precaution and so as not to impair our national security, Congress approved the unusual provisions relating to the annual financing of the agency operations. See: 50 U.S.C.A., sect. 403g; 50 U.S.C.A., sect 403j(b); 50 U.S.C.A. sect 403f(a). To illustrate the possible danger to the national security the defendants have submitted affidavits which conclusively establish that the financial information sought by the plaintiff, if made public, could lead to the disclosure of the Agency's intelligence efforts, provide a good picture of United States intelligence capabilities, and would no doubt compromise and endanger the government's efforts to maintain national security. Congress, in recognition of the close correlation between the funding and actual operation of an intelligence network, has amply guarded against the unauthorized disclosure of intelligence and methods by exempting from public scrutiny receipts and expenditures relative to the C.I.A.

Likewise, the National Security Act of 1947 puts the responsibility on the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. 50 U.S.C.A. sect 403(d)(3). As so clearly demonstrated by the

defendants' affidavits, disclosure of the information and records pertaining to the expenditures and transfers of public monies relative to the C.I.A. would compromise and open up for inspection the government's intelligence network and capabilities thereby making it impossible for anyone to protect intelligence sources and methods from unauthorized disclosure.

Finally, the Court is of the firm belief that the information sought by the plaintiff under the Freedom of Information Act is also exempt from disclosure by Executive Order 11652, 3 C.F.R. 375, 1973. <sup>1/</sup> As previously stated, the Freedom of Information Act specifically exempts from disclosure matters which are "specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive order." 5 U.S.C.A., sect 552(b)(1). Executive Order 11652 promulgated by President Nixon in 1973 is the current executive order governing the classification of national security information and material. The test for a "secret classification" under

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<sup>1/</sup> Executive Order 11652 . . . provides in part . . . this official information or material referred to as classified information or material in this order, is expressly exempt from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

Executive Order 11652 is whether the unauthorized disclosure of said material could reasonably be expected to cause serious damage to the national security. A thorough review of the record conclusively establishes that the defendants have not only complied with the procedural requirements for obtaining a "secret classification" but have also demonstrated to the satisfaction of this Court, through detailed affidavits, that the classification was a proper one. More specifically, the public disclosure of these materials classified as "secret" would cause serious damage to our national security.<sup>2/</sup>

In view of the above, the Court can only conclude that the individual defendants, as well as the agencies to which they belong, acted properly in refusing to disclose the information sought by the plaintiff. The Court also is of the firm belief that the Department of Justice and its personnel, properly and lawfully, exercised their official duties in representing the defendants in this action.

#### ORDER

AND NOW, this 30th day of January, 1976, the Motion for Summary Judgment by defendants, J. T. Spahr, Director Executive Staff, Bureau of Government Financial Operations, Department of the Treasury; Robert S. Young, Freedom of Information Coordinator, Central Intelligence Agency; William E. Colby, Director, Central Intelligence Agency; James T. Lynn, Director, Office of Management and Budget; William E. Simon, Secretary of the Treasury; Edward H. Levi, Attorney General of the United States, against the plaintiff, William B. Richardson, is hereby granted.

signed : WALLACE S. GOURLEY, Senior  
District Judge

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<sup>2/</sup> Defendants' contentions that plaintiff's requests did not constitute reasonable requests or reasonably identify the records as required by the Freedom of Information Act will not be

discussed herein. Even if the Court had determined that the plaintiff's requests were reasonable within the meaning of the statute, the information would nevertheless be exempt from disclosure pursuant to the Central Intelligence Act of 1949, the National Security Act of 1947, and Executive Order 11652.

End of Opinion and Order

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent text of the constitutional provision and derivative or related statutes plus the Freedom of Information Act and Executive Order 11652 are set out below:

## Article 1 Section 9 Clause 7

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

## The Freedom of Information Act - Pertinent Portions

## 5 U.S.C. 552(a)(3):

(a) Each agency shall make available to the public information as follows:

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person

## 5 U.S.C. 552(b)(1):

(b) This section does not apply to matters that are --

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

## 5 U.S.C. 552(b)(3):

(b) This section does not apply to matters that are --

(3) specifically exempted from disclosure by statute;

5 U.S.C. 552(b)(3): as of March 12th, 1977:

(b) This section does not apply to matters that are --

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

## 5 U.S.C. 552(b): (last para)

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

## 5 U.S.C. 552(a)(4)(B):

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

Federal Criminal Statutes - Pertinent Parts

Title 18 U.S.C. sect. 643:

Whoever, being an officer, employee or agent of the United States or of any department or agency thereof, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law is guilty of embezzlement - - -

Title 18 U.S.C. sect. 644:

Whoever, not being an authorized depository of public moneys, knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law is guilty of embezzlement - - -

Title 18 U.S.C. sect. 1001:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000.00 or imprisoned not more than five years, or both.

Title 18 U.S.C. sect. 1018:

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than \$500 or imprisoned not more than one year, or both.

Title 18 U.S.C. sect. 2073:

11a

Whoever, being an officer, clerk, agent, or other employee of the United States or any of its agencies, charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure, or defraud, makes in any such account or record any false or fictitious entry or record of any matter relating to or connected with his duties; or

Whoever, being an officer, clerk, agent or other employee of the United States or any of its agencies, charged with the duty of receiving, holding, or paying over moneys or securities to, for, or on behalf of the United States, or of receiving or holding in trust for any person any moneys or securities, with like intent, makes a false report of such moneys or securities -

Shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

Money and Finance Statutes - Pertinent Sections  
and Parts

Title 31 U.S.C. sect. 65:

It is the policy of the Congress in enacting this chapter that -

(a) The accounting of the Government provide full disclosure of the results of financial operations, adequate financial information needed in the management of operations and the formulation and execution of the Budget, and effective control over income, expenditures, funds, property, and other assets.

- - -

(c) The maintenance of accounting systems and the producing of financial reports with respect to the operations of executive agencies, including central facilities for bringing together and disclosing information on the results of the financial operations of the Government as a whole, be the responsibility of the executive branch.

- - -

12a

Title 31 U.S.C. sect. 65a:

As used in this chapter, the term "executive agency" means any executive department or independent establishment in the executive branch of the Government - - -

Title 31 U.S.C. sect. 66:

(a) - - - Requirements prescribed by the Comptroller General shall be designed to permit the executive agencies to carry out their responsibilities under section 66a of this title, while providing a basis for integrated accounting for the Government, full disclosures of the results of the financial operations of each executive agency and the Government as a whole, - - -

Title 31 U.S.C. sect. 66a:

(a) The head of each executive agency shall establish and maintain systems of accounting and internal control designed to provide -

(1) full disclosure of the financial results of the agency's activities;

- - -

(5) suitable integration of the accounting of the agency with the accounting of the Treasury Department in connection with the central accounting and reporting responsibilities imposed on the Secretary of the Treasury by section 66b of this title.

- - -

Title 31 U.S.C. sect. 66b:

(a) The Secretary of the Treasury shall prepare such reports for the information of the President, the Congress, and the public as will present the results of the financial operations of the Government: - - -

## Title 31 U.S.C. sect. 1019:

There shall be in the Bureau of Accounts of the Fiscal Service, Treasury Department, a division of bookkeeping and warrants. Upon the books of this division shall be kept all accounts of receipts and expenditures of public money except those relating to the postal revenues and expenditures therefrom. It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of this section.

note: sub-para (b) of Title 31 U.S.C. 66b (sub-section (a), in part, supra) incorporates sections 1019 and 1029 in sub-section (b) in a manner that all three sections interlace and certify.

## Title 31 U.S.C. section 1029:

It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the Post-Office Department, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation.

## National Security Statutes - Pertinent Portions

## Title 50 U.S.C. sect. 403(d)(3):

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council --

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, that the Agency shall have no police, subpoena, law-enforcement powers, or internal security functions: Provided further, that the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: And provided further, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

## Central Intelligence Agency Act - Pertinent Portions

## Title 50 U.S.C. 403f(a):

In the performance of its functions, the Central Intelligence Agency is authorized to --

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this Title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a -- 403j of this title without regard to limitations of appropriations from which transferred;

## Title 50 U.S.C. 403g:

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency; Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5.

## Title 50 U.S.C. 403j(b):

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

Executive Order 11652 provides, in pertinent part, 3 C.F.R. 339, 340 (1974), as taken from the Government's brief in the Court of Appeals:

(B) "Secret." "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the

national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

## APPENDIX D

Affidavit of D. A. PAGLIAI, Commissioner, Bureau of Government Financial Operations:

D. A. PAGLIAI, being first duly sworn, deposes and says:

1. I am the Commissioner, Bureau of Government Financial Operations of the United States Department of the Treasury and have occupied that position since March 10, 1975 and I have been employed by the Department of the Treasury for 37 years. I have personal knowledge of the facts set forth herein, which facts were obtained by me in my official capacity.

2. The Bureau of Government Financial Operations is a part of the Fiscal Service of the Department of the Treasury under Reorganization Plan No. III, effective June 30, 1940. The Bureau of Government Financial Operations, under the direction of the Commissioner, has responsibility for a variety of Government-wide fiscal activities of scope including the maintenance of a system of central summary accounting for the Government and the preparation and publication of financial reports for the information of the President, the Congress, and the public disclosing overall budget results, cash assets and related liabilities, and the status of appropriations and funds.

D. A. PAGLIAI Affidavit - cont'd

3. Functions of the Bureau of Government Financial Operations include publication of the annual Combined Statement of Receipts, Expenditures and Balances, (Combined Statement) which is recognized as the official publication of receipt and outlay data.

4. The format of the Combined Statement follows generally that of the President's Budget, as presented to the Congress for enactment. The presentation of expenditures in the Budget and in the Combined Statement is shaped by Presidential direction and Congressional action.

5. The report of expenditures in the Combined Statement presents central summary data only for each and every appropriation and fund account authorized by the Congress, approximately 4000 accounts. An account is a record of financial transactions showing receipts and expenditures for a particular appropriation. Details of expenditures below that level are kept by the individual agencies.

6. Appropriations authorizing expenditures by the Central Intelligence Agency are normally not identified by the Congress by the passage of an appropriations Act naming the Agency as the recipient of the funds. Therefore, we do not and cannot identify these appropriations in the Combined Statement. When specifically identified by the Congress, e.g., the appropriation "Construction, Central Intelligence Agency," we do identify it in the Combined Statement like any other appropriation.

D. A. PAGLIAI Affidavit - cont'd (para 7 double-spaced for emphasis)

7. There are records concerning the receipt, expenditure and transfer of public moneys in the possession of the Department of the Treasury relating to the Central Intelligence Agency. These records do not on their face state which records represent transactions undertaken by or on behalf of C.I.A. These records are of four (4) general types or categories: (1) Statements of Transactions involving C.I.A. Accounts with the Department; (2) Reports of Disbursing Officers relative to Accounts which Reports reference by account number transactions undertaken by or on behalf of C.I.A. together with transactions effected by the disbursing officer for the account of other agencies; (3) Bank Transcripts of deposits made through the Government depository system; and (4) cancelled checks. Although I cannot estimate with complete accuracy the number of documents described in this paragraph, I can state that they number in excess of one million.

D. A. PAGLIAI Affidavit - cont'd

8. A transaction can be identified as a C.I.A. transaction only by reference to either information supplied by the C.I.A. or by use of documents containing secret coded account numbers. Each of these documents is now classified by the C.I.A. as Secret under Executive Order 11652, bear that legend, and further recite that said document is exempt from the General Declassification Schedule in accordance with section 5, subsection (B), paragraph (2) of Executive Order 11652.

9. To determine whether a transaction was undertaken for or on behalf of the C.I.A. giving details of the transactions such as dates, amounts, payors or payees - whether the transactions involved a receipt, transfer or expenditure - would necessitate an examination and correlation of a record in each category enumerated in paragraph 7. Even using all such records in the possession of the Department of the Treasury could not give the complete details of every C.I.A. transaction or even the complete details of any C.I.A. transaction in almost every instance.

10. I have reviewed a request for records made by William B. Richardson dated February 19th, 1975, a true copy of which is attached to the affidavit of William V. Bour, Jr., dated May 5, 1975, Exhibit A to the Defendant's Motion filed herein. Mr. Richardson has requested "reports of C.I.A. receiving, spending, or transferring public money giving complete details of each transaction . . . with dates, amounts, names and other descriptive data omitting no details in possession (sic) Treasury Department particularly including date

information (sic) received."

11. To determine all transactions of C.I.A. receiving, spending or transferring public money which are identifiable in the Treasury records giving complete details of each transaction with dates, amounts, names and other descriptive data omitting no details in possession of the Treasury Department would require an examination of all of the types of documents in paragraph 7 followed by their subsequent correlation. Even after examination and correlation of all such records in the possession of the Department of the Treasury there would be no assurance that all C.I.A. transactions would be identified. It is impossible to calculate with any degree of certitude the number of person years necessary to compile a report of the kind requested by Mr. Richardson, but it would be enormous.

s/ D. A. PAGLIAI

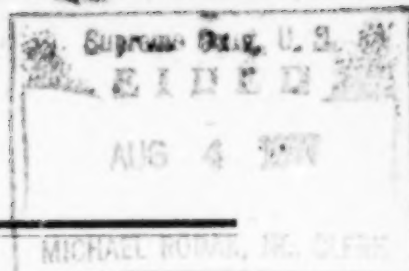
Subscribed and sworn to before me this

7 day of May, 1975.

s/ Lois H. Cottrelle  
Notary Public

My Commission expires: (unreadable)

No. 76-1730



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**In the Supreme Court of the United States**

OCTOBER TERM, 1977

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**WILLIAM B. RICHARDSON, PETITIONER**

**v.**

**J. T. SPAHR, ETC., ET AL.**

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***ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT***

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**MEMORANDUM FOR THE RESPONDENTS  
IN OPPOSITION**

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**WADE H. MCCREE, JR.,**  
*Solicitor General,*  
*Department of Justice,*  
*Washington, D.C. 20530.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
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---

MEMORANDUM FOR THE RESPONDENTS  
IN OPPOSITION

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Relying principally on the Freedom of Information Act, 5 U.S.C. 552, petitioner brought these actions in the United States District Court for the Western District of Pennsylvania against the Department of Treasury, the Office of Management and Budget, the Central Intelligence Agency, and certain officers and employees of those agencies, to obtain records reflecting the receipt and expenditure of funds by the Central Intelligence Agency.<sup>1</sup> The government submitted detailed affidavits to the district court showing

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<sup>1</sup>Petitioner has unsuccessfully sought substantially the same information in two prior lawsuits, *United States v. Richardson*, 418 U.S. 166, and *Richardson v. Sokol*, 409 F. 2d 3 (C.A. 3), certiorari denied, 396 U.S. 949. Neither of those actions was brought under the Freedom of Information Act.

that the requested information (1) was exempted from disclosure by statute, (2) was classified "secret," and (3) could reasonably be expected to cause serious damage to the national security if released. On the basis of these affidavits, the district court held that the requested information was exempt from disclosure under Exemptions 1 and 3 of the Freedom of Information Act, 5 U.S.C. 552(b)(1) and (3), and, accordingly, granted summary judgment for the government (Pet. App. 2a-6a).

The court of appeals affirmed without opinion and subsequently denied petitioner's petition for rehearing (Pet. App. 1a).

Petitioner contends that the courts below erred in holding that the requested information was exempt from disclosure under Exemptions 1 and 3 of the Act. The decisions of the courts below were correct, do not conflict with a decision of any other court of appeals, and present no issue warranting further review by this Court.

1. The district court correctly held that the materials sought by petitioner were exempt from disclosure under Exemption 1 of the Freedom of Information Act, 5 U.S.C. (Supp. V) 552(b)(1), which covers information that is "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) [is] in fact properly classified pursuant to such Executive order." To justify nondisclosure under that exemption, therefore, the government must prove that the requested material is classified and that the document "is 'in fact, properly classified' pursuant to both procedural and substantive criteria contained in such Executive order" (H. R. Conf. Rep. No. 93-1380, 93d Cong., 2d Sess. 12 (1974)).

That proof was made in this case. The affidavits submitted to the district court showed that the information

sought was classified "Secret" under Executive Order 11652, 3 C.F.R. 339, 340 (1974) (Pet. App. 19a; Addendum 17a, 38a-39a).<sup>2</sup> Moreover, the affidavits demonstrated that release of this information "could reasonably be expected to cause serious damage to the national security" (Addendum 7a, 17a, 39a-40a) and that classification of the documents therefore was proper.<sup>3</sup> As the district court concluded (Pet. App. 5a):

A thorough review of the record conclusively establishes that the defendants have not only complied with the procedural requirements for obtaining a "secret classification" but have also demonstrated to the satisfaction of this Court, through detailed affidavits, that the classification was a proper one. More specifically, the public disclosure of those materials classified as "secret" would cause serious damage to our national security.

2. The district court also determined, as a separate basis for its decision, that the requested information was exempt from disclosure under Exemption 3 of the Act, 5 U.S.C. 552(b)(3), which at that time provided an exemption for all information "specifically exempted from disclosure by statute." The court, noting that Section 102(d)(3) of the National Security Act of 1947, 61 Stat. 498, as amended, 50 U.S.C. (1952 ed.) 403(d)(3), requires "the Director of Central Intelligence [to] be responsible for protecting intelligence sources and methods from unwarranted disclosure," stated (Pet. App. 3a):

<sup>2</sup>"Addendum" refers to the separately bound Addendum to the government's brief filed in the Third Circuit.

<sup>3</sup>"The test for assigning 'Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security." 3 C.F.R. 340 (1974).

[T]he defendants have submitted affidavits which conclusively establish that the financial information sought by plaintiff, if made public, could lead to the disclosure of the Agency's intelligence efforts, provide a good picture of United States intelligence capabilities, and would no doubt compromise and endanger the government's efforts to maintain national security.

Moreover, the court noted that, to further this objective, Congress had established "unusual provisions relating to the annual financing of the agency operations" (*ibid.*). Thus, Sections 5(a), 6, and 8(b) of the Central Intelligence Agency Act of 1949, 63 Stat. 209, 211, 212, 50 U.S.C. (1952 ed.) 403f(a), 403g, and 403j(b), in essence, authorize the Central Intelligence Agency to receive funds from other agencies, to expend these funds for objects of a confidential nature without regard to other provisions of law, and to account for these funds solely on the certification of the Central Intelligence Agency Director. The legislative history of the Central Intelligence Agency Act makes plain that it was intended to prevent the disclosure of operating information about the Agency that could jeopardize its efforts to protect the national security. See S. Rep. No. 106, 81st Cong., 1st Sess. 4 (1949); H.R. Rep. No. 160, 81st Cong., 1st Sess. 2 (1949). Thus, the disclosure petitioner sought was barred by statute.<sup>4</sup>

<sup>4</sup>The recent amendment to Exemption 3, Pub. L. 94-409, 90 Stat. 1241, 1247, which became effective in March 1977, would not require a different result. The amendment limits Exemption 3 to information "specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." Section 102(d)(3) of the National Security Act of 1947 requires the Central Intelligence Agency Director to protect intelligence sources and

3. Congress has demonstrated its concern that the legitimate security interests of the Central Intelligence Agency not be compromised by improper disclosure of financial materials. Thus, it has declined to pass legislation that would have required the publication of the budgets of intelligence agencies. See 121 Cong. Rec. H9376-9377 (daily ed. October 1, 1975); 120 Cong. Rec. 17498 (1974). Similarly, the Senate, while establishing a permanent Select Committee on Intelligence to oversee intelligence activities, did not provide in the enabling resolution for the disclosure of funding authorized for intelligence agencies. See 122 Cong. Rec. S7563-7565 (daily ed. May 19, 1976).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,  
*Solicitor General.*

AUGUST 1977.

methods and thus requires the withholding of information that could compromise intelligence sources and methods if published.

Moreover, Representative Abzug, the amendment's primary sponsor in the House, specifically stated that Section 6 of the Central Intelligence Agency Act of 1947, 50 U.S.C. (1952 ed.) 403g, was an example of the exempting statutes covered by the language of the new Exemption 3. 122 Cong. Rec. H9260 (daily ed. August 31, 1976).

DOJ-1977-08